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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,217	12/10/2008	Michael Roy White	5650-00001	6661

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ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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07/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,217	Applicant(s) WHITE, MICHAEL ROY	
	Examiner Bryon P. Gehman	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/112006</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of the species of Figure 2 in the reply filed on June 2, 2010 is acknowledged. The traversal is on the grounds that the claims are common to both species. This is not found persuasive because none of the pending claims are deemed allowable and it is averred that the species as disclosed are obvious variants.

The requirement is still deemed proper and is therefore made FINAL.

2. The abstract of the disclosure is objected to because in its first line the phrase "There is provided a brush holder (40) comprises" is ungrammatical. In lines 4, 7 and 8, reference numerals are relied on as elements of the abstract, when the abstract is supposed to be written so as to make sense without any reference numerals, whether used or not. Correction is required. See MPEP § 608.01(b).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 8, "a side wall portion" is indefinite whether such is one previously defined, or a new side wall portion, and if so, how it is distinguished from those previously defined.

In claim 3, line 2, “said blank” lacks antecedent basis. The difference between “self-hinge lines” and the previously defined “fold lines” is indefinite.

In claim 5, line 2, “said brush” lacks antecedent basis, as no brush per se has been defined. To show reference to the previously mentioned brush the phrasing should be --the brush--.

In claim 6, line 2, the phrase “or the like” renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by “or the like”), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d). The scope or degree that “or the like” encompasses is also indefinite. See also claim 10, line 2 and claim 11, line 3.

In claim 7, lines 3 and 4, “said brush” again lacks antecedent basis, as no brush per se has been defined. In line 4, “the hanging hole” lacks antecedent basis.

In claim 8, line 6, “the upper of said end portions” lacks antecedent basis for what such comprises. In line 8, “the first of said lateral portions” lacks antecedent basis. In line 9, “first to extent” is ungrammatical and indefinite as to what is being defined, and “the face of the brush” is indefinite or lacks antecedent basis. In line 11, “its equivalent area” is indefinite as to what such comprises. In lines 12-13, “said folded configuration” lacks antecedent basis.

In claim 9, line 2, “the pattern and fold parameters” lack antecedent basis, as does “the folding order”. In line 4, “paintbrush” is inconsistent in form with claim 8, line 7, rendering a question as to their different meaning.

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In claim 11, lines 2-3, the “includes” clause is indefinite and ambiguous whether such is cumulative, or alternative.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6 and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bailey (6,932,217). Claims 1-5 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Mayfield (6,575,295). Each discloses a brush holder including a unitary housing (12; 18; respectively) formed of a paint solvent-impermeable sheet material (13, PVC; 68, see column 3, lines 55-61) having fold lines (36, 37, etc.; 38, 40, etc.) formed thereon defining a front wall portion (at one 46; 22), a rear wall portion (at opposite 46; 24), side wall portions (21 and 22; 20 and 36), a lower wall portion (38; 28) and an upper wall portion (23; 26), the housing defining an open-topped cavity, the upper wall portion selectively closing the open-topped cavity, locating means (33; 54) associated with the upper wall portion, at least one aperture (60; 66) located at a lower

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portion of the side wall portions and suspension means (52; 12 or portion of 26 on either side of 54) to suspend the brush holder and brush when assembled.

As to claims 2-3 and 9, each discloses the sheet material as flexible but form stable, the sheet material being also rigid and having self-hinge lines (at 36, 37, etc.; at 38, 40, etc).

As to claims 4 and 5, each discloses the locating means as an opening (33; 54) and portions surrounding the opening securing a retained brush within the housing.

As to claim 6, Bailey discloses the suspension means as a tab with an opening serving as a hanging loop.

As to claim 7, Mayfield discloses the suspension means as spaced lands (separated portions of 26) adapted to engage shoulders of the brush.

As to claim 8, each discloses relieved lateral portions (edges of 22 and 25; rounded edges of 32 and 34) and securing means (28-29; 58-62).

As to claim 10, each discloses the sheet material as plastic.

As to claim 11, Bailey discloses tongue-and slot fasteners (28-29).

7. **Prior Art not relied upon:** Please refer to the additional references listed on the attached PTO-892, which, while not relied upon for the claim rejection, these references are deemed relevant to the claimed invention as a whole. Shown are various bits and pieces which applicant discloses if not claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bryon P. Gehman/
Primary Examiner, Art Unit 3728

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG

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